IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

WP(C).No. 14871 of 2005(U)

PETITIONER:

E.M.PAULOSE,
(NO.EX.225088 JWO, AIR FORCE),
MENACHERY HOUSE, NAYARAMBALAM,
KOCHI - 68250.

BY ADV. SRI.M.RAJAGOPALAN

RESPONDENTS:

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1. UNION OF INDIA REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI.

2. PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSION), ALLAHABAD.

3. AIR OFFICER COMMANDING AIR FORCE
RECORD OFFICE, SUBROTO PARK,
NEW DELHI - 10.

BY ADV. SRI.MOHAN IDICULLA ABRAHAM, ADDL.CGSC
SRI. JOHN VARGHESE, ASG

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/01/2007, A/W. W.P.C.NO. 25237/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS: W.P.C.14871/2005

EXT.P1 COPY OF ORDER DT. 9-2-2001.

EXT.P2 ORDER DT. 29-10-2001.

EXT.P3 LETTER DT. 39-9-2004.

EXT.P4 LETTER DT.18-2-2005.

EXT.P5 LETTER DT.11-4-2005.

EXT.P6 RECORD OF DISBURSEMENTS ISSUED ON 6-10-2006.

EXT.P7 CIRCULAR ISSUED BY R2.

RESPONDENTS' EXHIBITS:

EXT.R1 LAST PAY CERTICATE DT. 17-4-1985.

EXT.R2 EXTRACT OF PENSION REGULATIONS FOR AIR FORCE 1961.

EXT.R3 LETTER DT. 25-10-2004.

EXT.R4 LETTER DT. 18-2-2005.

EXT.R5 LETTER DT. 16-2-2005.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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W.P(C) Nos. 14871 & 25237 of 2005

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Dated this, the 3rd January, 2007

J U D G M E N T

In these two writ petitions, two retired military personnel have approached this Court for a direction to grant them pension of Group I Junior Warrant Officer with 27 years and 21 years of service respectively, which was the post they were holding at the time of discharging from service. The petitioner in W.P(C) No. 14871/2005 retired on 1-3-1985, after 27 years of service after he served as Junior Warrant Officer for three months. In W.P(C) No. 25237/2005, the petitioner was discharged on 31-3-1977, after 21 years and 25 days of service, after serving as Junior Warrant Officer for six months. The petitioners submit that earlier, for being eligible for pension in a promoted post, the military personnel should have put in minimum two years of service in that post. Later, that was reduced to 10 months. Still later, as per Exts. P1 and P2 orders produced in W.P(C) No. 14871/2005, it was clarified that the requirement of 10 months' service in the promoted post need not be insisted upon and the discharged military personnel would be entitled to pension in the post/rank from which he was discharged from service irrespective of the period of service he has put in, in that post. In the above circumstances, in both these cases, the petitioners now confine their prayers for quashing the orders impugned in these writ petitions, denying their claim for pension as Junior Warrant Officers and for a direction to the respondents to grant them pension of a Group I Junior Warrant Officer with 27 years and 21 years of service respectively.

2. In both these cases, the respondents have filed counter affidavit. The respondents do not dispute the right of the petitioners to claim pension as Junior Warrant Officers in the light of Exts. P1 and P2 in W.P(C) No. 14871/2005. Going by the impugned orders as well

as the counter affidavit, their stand appears to be that if their pension is to be calculated in the rank of Junior Warrant Officer, the petitioners would be getting less pension than what they are getting now. The petitioners would strongly dispute this. They would also submit that even assuming it to be so, it is their choice in so far as their eligibility for pension as Junior Warrant Officers cannot be disputed by the respondents. Petitioners have also produced a table showing the pension payable to Junior Warrant Officers discharged after different periods, as per which according to them, they are entitled to much higher pension. That being so, I am of opinion that the petitioners' prayer as now projected can be allowed.

Accordingly, the impugned orders in both these writ petitions are quashed and the respondents are directed to grant pension to the petitioners in these two writ petitions as Group I Junior Warrant Officer with 27 years and 21 years of service respectively. The pension of the petitioners shall be re-computed accordingly in accordance with the rules applicable and arrears, if any, shall be disbursed to them within a period of two months from the date of receipt of a copy of this judgment. The writ petitions are allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/